IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1251 OF 2007

The Greater Bombay Co-operative Bank Ltd. ...Appellant
Vs.
Ramprakash Vilasrai Bubna & Ors. ...Respondents

Mr. R.A. Thorat, Advocate for Appellant
Mr. N.B. Pandit i/b. M/s. Hemant Shetty & Co. for Respondent No.1
Mr. P.J.Thorat, Advocate for Respondent No.4B

CORAM: SMT.ROSHAN DALVI,J.
DATED: 22ND JUNE, 2007

P.C.

1. The Counsel of both the parties have been heard at length. This Appeal can be disposed of at the stage of admission itself. The lis is between the flat purchaser on the one hand and the owner of the suit plot of land, the developer thereof and one of the other purchasers who is a Bank (Defendant No.3) and the Director and Chairman of the Bank Defendants 4(a) and 4(b) in the Suit.

2. The Suit filed in the Bombay City Civil and Sessions Court being Suit No.7715 of 1993 was for a declaration that the sale in favour of the Officers of the Bank of the open stilt

portion on the suit plot of land is void and restraining their use therein as well as restraining them from enclosing the stilt portion or disturbing the Plaintiff's user in the stilt portion for parking the cars and other ancillary reliefs. Upon evidence being read the suit has been decreed in terms of prayers (a),(b),(c),(e) and (h). The Bank has challenged the decree. The Officers of the Bank have not challenged the Decree.

3. It may at once be mentioned that though the agreements executed by the Developer are in favour of the Officers of the Bank showing them as the Officers of the Bank, the Bank claims the rights under the said agreements which are sought to be avoided by the Plaintiffs. The learned Judge has considered essentially the extent of the rights of the flat purchasers under Section 7 of the Maharashtra Ownership of Flats Act, 1963 (MOFA). The Agreements which are challenged are required to be first seen. They are executed in May, 1988 for sale of what are termed as Garage Nos.8 and 9. The premises agreed to be sold are admittedly open premises in the stilt portion of the building.

4. Under these agreements the Bank through its Officers can derive the right to use the garage for car parking only which is a legal and legitimate right also of all the flat purchasers

on the plot of land developed by the Builder, but they are not entitled to make alterations by erecting partition walls therein. Hence, the worth of the agreements are only to that extent.

5. The Respondents have challenged said agreements, and specifically the construction allowed to be put up thereunder. After the initial arguments, the Counsel on behalf of the Bank, upon taking instructions from the Manager Mr. S.T. Tawde, undertakes to the Court that the Bank and its Officers shall only use the garages agreed to be sold to them for car parking along with the other flat purchasers and occupiers of the building, including the Plaintiff. He further undertakes that the Bank or its Officers shall not put up any construction or erect any partition walls in the garages agreed to be sold which are open spaces under the Stilt portion of the building. This is in consonance with all the other flat purchasers also having a similar right to the extent allowed in Rule 36 of the DC Regulations governing the use of parking spaces.

6. The Plaintiff's Counsel upon taking instructions from the Plaintiff who is present in the Court similarly gives undertaking that he shall also allow the Bank and its Officers to use the garages agreed to be sold under the

aforesaid agreements as open garages under the stilt portion of the building along with the flat purchasers in consonance with Rule 36 of the DC Regulations.

7. The undertakings are accepted.

8. Hence, the Respondent No.1 is entitled to the declaration claimed except with regard to the user of the stilt portions as aforesaid by the Appellants. He is also entitled to the Injunction against covering or enclosing or partitioning the said stilt portions or disturbing the user of Respondent No.1 thereto.

9. The Decree passed under the impugned Judgment to the extent only of prayer (b) is, therefore, required to be set aside. The agreement between the parties only to that extent is seen to be valid. Hence, the rest of the decree is confirmed.

10. The Appeal disposed of accordingly.

(SMT. ROSHAN DALVI, J.)